In the Supreme Court of the United States.

OCTOBER TERM, 1902.

ANDREW W. SMYTH ET AL., PLAINTIFFS IN error,
v.
THE UNITED STATES.
No. 88.

SUPPLEMENTAL STATEMENT FOR UNITED STATES.

I desire to correct a misstatement contained in my brief (pp. 37 and 38) as to the exchangeability of mutilated currency for new currency. The rules and regulations of the Treasury Department governing such exchanges are as follows:

> 12. United States notes, Treasury notes of 1890, fractional-currency notes, gold certificates, silver certificates, and national-bank notes, when mutilated so that less than three-fifths, but clearly more than two-fifths, of the original proportions remain, are redeemable by the Treasurer only, at one-half the face value of the whole note or certificate. Fragments not clearly more than two-fifths are not redeemed, unless accompanied by the evidence required in paragraph 13.
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> 13. Fragments less than three-fifths are redeemed at the face value of the whole note when

> accompanied by an affidavit of the owner or other persons having knowledge of the facts that the missing portions have been totally destroyed. The affidavit must state the cause and manner of the mutilation, and must be sworn and subscribed to before an officer qualified to administer oaths, who must affix his official seal thereto, and the character of the affiant must be certified to be good by such officer or some one having an official seal. Signatures by mark (X) must be witnessed by two persons who can write, and who must give their places of residence. The Treasurer will exercise such discretion under this regulation as may seem to him needful to protect the United States from fraud. Fragments not redeemable are rejected and returned. Paper currency which has been totally destroyed can not be redeemed. The Department does not furnish blank forms for affidavits. (1900, Department Circular No. 32; Treasurer's Office No. 69.)

There is nothing in the evidence to show whether the fragments of notes in this case were greater or less than the proportions mentioned in the above Regulations; but it is not important whether these charred fragments are exchangeable for new notes, for the record is silent as to any such claim on the part of the superintendent of the mint in the adjustment of his accounts with the Government.

It will be observed that under the Regulations exchange is to be made by the Treasurer only, and where portions of the notes are totally destroyed affidavits must be made by those having knowledge of the facts

"that the missing portions have been totally destroyed." The right to exchange is then left to the executive discretion of the Treasurer, and the exercise of such executive discretion is not reviewable by the courts. Even, therefore, if a claim had been made to the Treasurer to exchange new notes for the mutilated currency, the decision of the Treasurer would be final as to such right of exchange. In this case, however, the record fails to show that any such application was made to the Treasurer or that the necessary affidavit to support it was made. In their mutilated form they were clearly not a legal tender.

Respectfully submitted.

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